

(2000) 01 BOM CK 0042

In the Bombay High Court

Case No : Civil Revision Application No. 964 of 1991

Apparao Bapurao Mane

APPELLANT

Vs

Shivaji Bapurao Mane and others

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, 54
Hindu Succession Act, 1956 — Section 14

Citation : (2000) 3 ALLMR 105 : (2000) 4 BomCR 470

Hon'ble Judges : V.K. Barde, J

Bench : Single Bench

Advocate : M.V. Deshpande, for the Appellant; P.V. Mandlik, for the Respondent

Judgement

V.K. Barde, J.—This is a petition against the order passed by the learned Civil Judge, Junior Division, Kandhar; in Regular Darkhast No. 22 of 1986. The present respondents Nos. 1 & 2 had filed Regular Civil Suit No. 8 of 1976 in the Court of the Civil Judge, Junior Division, Kandhar, for partition and separate possession. Respondent No. 2 is the mother of respondent No. 1; while respondent No. 3 is the husband of respondent No. 2. The present petitioner and respondent No. 4 are the sons of respondents Nos. 2 and 3. An appeal was filed against the judgment and decree passed by the trial Court, being Regular Civil Appeal No. 160 of 1989, but the same was dismissed. The decree declared that each of the parties was having undivided one-fifth share in the property, which included agricultural lands, assessable to land revenue, and the house property. Thus, both Shivaji and Rukminibai, the plaintiffs in the said suit, each got one-fifth share in these properties.

2. Shivaji and Rukminibai thereafter filed Regular Darkhast No. 47 of 1982 for partition and separate possession, wherein they had demanded the partition and separate possession.

3. In ordinary course, considering the provisions of section 54, read with the provisions of O. XX, Rule 18, C.P.C., so far as the partition of agricultural lands is

concerned, the papers ought to have been transmitted to the Collector for effecting equitable partition as per the directions issued in the decree. So far as the house property is concerned, no execution petition could have been filed, because there was no final decree for partition of the house property. There ought to have been an application for final decree for effecting partition by metes and bounds of the house property. In spite of these basic defects in the Execution Petition No. 47 of 1982, the parties proceeded and the Court allowed the parties to proceed in the Civil Court for the purpose of execution of the decree.

4. It appears that thereafter, a compromise petition was filed before the Court. The said compromise was executed by Bapurao and his three sons, Apparao, Vithal and Shivaji, the last being the plaintiff in the original suit. The learned Civil Judge, by his order dated 1-10-1983, recorded the compromise and passed the following order :

"Read Exhibit No. 37 and 38. J.D. filed copy of partition deed. In view of Exhibit No. 37, R.D. is closed in full satisfaction. Inform to Collector accordingly."

And thus, so far as Execution Petition No. 47 of 1982 is concerned, it came to an end.

5. Shivaji and Rukminibai, thereafter, again filed Regular Darkhast No. 22 of 1986 for partition and separate possession. In response to the notice issued in the said Darkhast, the present petitioner Apparao took the stand that the partition was already effected amongst the parties as per the registered partition deed, dated 2-4-1983; and contended that so far as possible, his possession should not be disturbed. The learned Civil Judge, after considering the provisions of section 54, C.P.C., turned down the request of the present petitioner, Apparao, and directed that the papers be sent to the Collector, Nanded, as per the provisions of section 54, C.P.C., for effecting partition of the suit lands. So, against this order, the petitioner has filed this revision petition.

6. Heard the learned Counsel for the petitioner; as well as for respondents Nos. 1 and 2. Respondents Nos. 3 and 4, though served, have not filed appearance.

7. The contention of the petitioner is that the partition has taken place by registered partition deed dated 2-4-1983 and it was also given effect to by recording the same in Regular Darkhast No. 47 of 1982.

8. The copy of the partition deed is produced at Exhibit B at page No. 14. On going through this partition deed, one thing is apparent that the partition has taken place between Bapurao and his three sons, Apparao, Vithal and Shivaji. Rukminibai was not a party to that partition deed. She has not executed the partition deed. It is already made clear that she is having one-fifth share in the properties as per the decree passed in the suit. So, any partition of the property effected in her absence; or, without her consent, cannot be called partition as per the decree. That may be an arrangement between the father and three sons; but that arrangement cannot bind Rukminibai, who was not party to that document.

9. It is really regretted that the Civil Judge, Junior Division, Kandhar, while passing the order dated 1-10-1983, did not pare to note that Rukminibai was not a party to the deed of partition. He also did not take care to obtain say of Rukminibai in the matter. The order on Exhibit A does not indicate that he had brought to the notice of Rukminibai the partition deed and her say was recorded. When the decree is giving one-fifth share to Rukminibai, the partition of the property cannot be effected in her absence. That partition which is effected in her absence, or, any order passed by the Civil Judge, on the basis of partition deed, in execution petition No. 47 of 1982, is not at all binding on her.

10. It is also to be noted that Shivaji, when filed the suit, was minor and Rukminibai was acting as his next friend. While filing Regular Darkhast No. 47 of 1982, Shivaji is shown major and his age is mentioned as 19 years. However, in this respect, the provisions of O. XXXII, Rule 12, C.P.C., were not followed. If the minor had attained majority and if he had filed application for execution, then a notice to the next friend, Rukminibai, ought to have been issued as per O. XXXII, Rule 12(5), C.P.C. The learned Civil Judge, while considering the partition and agreement between the parties, failed to take note of this and Rukminibai was kept in dark.

11. It is to be noted that as per section 14 of the Hindu Succession Act, Rukminibai is having share in the property and she is entitled to get that share by way of partition. So, whatever partition is effected by the father and three sons is of no consequence, so long as she is not given her share, either as per her consent or as per law, that means, by effecting the partition, as per the decree.

12. In such circumstances, when the second Execution Petition No. 22 of 1986 was filed, the learned Civil Judge, Junior Division, Kandhar, was correct in directing that the papers be sent to the Collector for effecting the partition. The order dated 19-11-1990 passed by the learned Civil Judge is according to law. No interference is called for. The partition of agricultural lands, assessable to land revenue, will have to be effected as per the directions in the decree under the provisions of section 54, read with Order XX, Rule 18, C.P.C.

13. While effecting such partition, the Collector may take note of the agreement between the father and three brothers; and while effecting the equitable partition may take necessary steps for giving effect to that agreement as far as possible. However, it is also made clear that the learned Counsel for respondents Nos. 1 and 2 states that on the partition deed, Shivaji had not signed and, therefore, that partition deed is bogus; but that point also can be considered by the Collector, if at all, any effect is to be given to the so-called partition deed. After all, the Collector has to effect equitable partition of the agricultural lands amongst all the five sharers. Obviously, when Rukminibai is not given share, all the lands stand on equal footing for partition; and for giving equitable share to each of them; and this aspect need not be lost sight of.

14. In spite of all these things, I would like to observe that, even if, now, the parties come to any compromise with respect to partition of agricultural lands, they may place such compromise before the Collector, for giving effect to it. The Collector may accept that the agreement or compromise, if he finds the same proper and legal.

15. In view of this, rule is discharged. Civil Revision Application disposed of. Here, the main sufferer is Rukminibai, respondent No, 2; and, therefore, the petitioner is directed to pay costs of Rukminibai. Other parties to bear their own costs.

16. Rule discharged.